

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

ADEL RASHED,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 07 C 6123
	)	
MICHAEL CHERTOFF, Secretary, United	)	Judge Guzman
States Department of Homeland Security, <i>et</i>	)	
<i>al.</i> ,	)	
	)	
Defendants.	)	

**DEFENDANTS' MOTION TO DISMISS**

Defendants move to dismiss the petition for hearing on application for naturalization for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1), and in support state as follows:

1. Plaintiff Adel Rashed has filed a petition seeking a hearing on his application for naturalization pursuant to 8 U.S.C. § 1447(b). Petition at 1.
2. Rashed alleges that the court has jurisdiction to hear his petition, as more than 120 days have run since his interview by CIS on September 23, 2002, without any decision by CIS. *Id.* at 2.
3. Rashed's application for naturalization was denied on March 24, 2004, due to his failure to appear mandatory fingerprinting. Ex. 1.<sup>1</sup>
4. The notice of denial was sent by certified mail to Rashed, who apparently signed the certified mail receipt on March 27, 2004. *Id.* at 3.

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<sup>1</sup> The fact that matters outside the pleadings are referred to in this motion to dismiss for lack of subject matter jurisdiction does not automatically convert it to a Rule 56(c) motion for summary judgment, and no separate statement of facts is required under Local Rule 56.1. *See United Transportation Union v. Gateway Western Railway Company*, 78 F.3d 1208, 1210 (7th Cir. 1996).

5. Jurisdiction under section 1447 only lies if no decision has been made on Rashed's citizenship application. 8 U.S.C. §§ 1446, 1447(b). Since defendants have already denied Rashed's citizenship application, there can be no jurisdiction, and the petition should be dismissed.

WHEREFORE, defendants pray that the petition be dismissed with prejudice.

Respectfully submitted,

PATRICK J. FITZGERALD  
United States Attorney

By: s/ Ernest Y. Ling  
ERNEST Y. LING  
Assistant United States Attorney  
219 South Dearborn Street  
Chicago, Illinois 60604  
(312) 353-5870  
ernest.ling@usdoj.gov